

1 lines of you'd let them go on the bus, you'd
2 let them go to the grocery store, but if you
3 had a sex offender would you let him into an
4 internet chat room frequented by children, if
5 it was up to you?

6 MR. LYON: Objection, irrelevance.

7 JUDGE SIPPEL: Sustained.

8 MR. KNOWLES-KELLETT: Your Honor,
9 he was able to go on at length for posing his
10 hypotheticals to Detective Shilling, and I
11 think he posed hypotheticals that are
12 different, not similar, to holding an amateur
13 radio license. I'd like to get Detective
14 Shilling's opinion as to some situation
15 similar to holding an amateur radio license.

16 MR. LYON: Well, I'll stipulate
17 that you wouldn't, I will stipulate that if
18 you could control it you wouldn't want a sex
19 offender in a chat room with children present.
20 But I won't stipulate at all that it's
21 analogous to ham radio.

22 MR. KNOWLES-KELLETT: I think that

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1 goes to the weight, your Honor.

2 JUDGE SIPPEL: Well, I'm not
3 prepared to concede that or to conclude that
4 one way or the other. I'm going to direct you
5 to steer clear of the internet.

6 BY MR. KNOWLES-KELLETT:

7 Q Okay. Detective Shilling, if you
8 were in charge of a club where the people had
9 similar interests and many of them were
10 children and you were on the membership
11 committee, would you be inclined to grant a
12 sex offender membership to the club, in light
13 of the grooming concerns you've expressed?

14 A If there were children that were
15 part of that group, I would not want them as
16 a member.

17 Q If I told you on ham radio there
18 were places, certain particular frequencies
19 where people gather, congregate, and chat
20 without their identities being immediately
21 ascertainable, and some of those were
22 children, would you have serious concern about

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1 permitting a sex offender to participate?

2 A Absolutely.

3 Q Okay. There was a bit of
4 testimony about the incidents in Exhibit 4.
5 I'd like you to turn your attention to Exhibit
6 4, page 35, the incident, the traffic
7 altercation with a woman. I believe you
8 testified that this was one of the factors in
9 raising him to a level three in 2004, and my
10 question --

11 A On page 36 you said?

12 Q Thirty-five and thirty-six.

13 A Okay.

14 Q I guess it goes to 37, 35 to 37.
15 My question is what concerns about this
16 incident affected your determination to raise
17 him to a level three?

18 MR. LYON: Objection. I believe
19 that was asked and answered on direct.

20 MR. KNOWLES-KELLETT: Your Honor,
21 I think on direct there were specific
22 questions answered. However, he did not get

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1 a chance to fully explain what all his
2 concerns are.

3 MR. LYON: I don't believe I
4 crossed on that incident, did I?

5 MS. LANCASTER: Yes, you did.

6 MR. KNOWLES-KELLETT: Yes, you
7 did.

8 MR. LYON: Okay. If I did, I did.

9 JUDGE SIPPEL: And your question
10 is what?

11 MR. KNOWLES-KELLETT: Just what
12 concerns led to, the answer that this was one
13 of the factors that raised him to a level
14 three was one of the answers to one of your
15 questions.

16 JUDGE SIPPEL: It was my question.
17 I remember that exchange.

18 MR. KNOWLES-KELLETT: Okay. I
19 just wanted a chance to explain all his
20 concerns.

21 JUDGE SIPPEL: He did.

22 MS. LANCASTER: Well, I think we

1 can ask him if he covered everything, your
2 Honor.

3 JUDGE SIPPEL: I don't think he
4 gave me an incomplete answer. Do you think he
5 did?

6 MS. LANCASTER: I think --

7 MR. KNOWLES-KELLETT: He didn't
8 get to go back and give him a chance to go --

9 MS. LANCASTER: Just ask him if
10 there's anything that he'd like to add to
11 that.

12 BY MR. KNOWLES-KELLETT:

13 Q Is there anything you'd like to
14 add to your previous answer?

15 JUDGE SIPPEL: Do you recall my
16 question and your answer with respect to,
17 basically it was the same question. The two
18 matters, the traffic incident and then the
19 Mercer Island?

20 THE WITNESS: I do recall the
21 answer.

22 BY MR. KNOWLES-KELLETT:

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1 Q Is there anything you'd like to
2 add to that answer, any further concerns?

3 A Yes.

4 Q What are they?

5 A Part of the concern was not only
6 the fact about the victim thinking that he may
7 be a police officer and Mr. Titus not
8 answering her on that fact when she asked him,
9 but the fact that he had used violence against
10 her.

11 MR. LYON: Objection, your Honor.
12 That conclusion of the witness is based upon
13 a hearsay police report that is not in
14 evidence but for the truth of the matters
15 asserted. And absent the witness having
16 personal knowledge of the facts, it's not
17 appropriate for him to make that allegation.

18 MR. KNOWLES-KELLETT: Mr. Titus
19 testified that he used violence yesterday,
20 your Honor.

21 MS. LANCASTER: Testified he
22 twisted her arm behind her back, if you

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1 recall, your Honor.

2 MR. KNOWLES-KELLETT: He confirmed
3 the incidents that we're talking about.

4 JUDGE SIPPEL: The reason I'm
5 hesitating, I'm trying to remember. He
6 certainly did testify in that area, and it was
7 not a complete rejection of the report.

8 MS. LANCASTER: He testified that
9 she put her finger up, and he told her to move
10 her finger, and when she didn't he grabbed her
11 arm and twisted it behind her back. That was
12 his testimony yesterday.

13 JUDGE SIPPEL: He's shaking his
14 head. Mr. Titus is right here with us.

15 MS. LANCASTER: We can go back and
16 have the court reporter --

17 JUDGE SIPPEL: That's going to
18 take a lot of time.

19 MR. KNOWLES-KELLETT: Detective
20 Shilling relied on the police report, and if
21 that was one of his current concerns and it
22 didn't happen --

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1 JUDGE SIPPEL: Well, go ahead. Go
2 ahead, finish it up. He already answered the
3 question of yours.

4 MR. LYON: Let's just move on
5 then.

6 JUDGE SIPPEL: Let's move on.

7 BY MR. KNOWLES-KELLETT:

8 Q Turning your attention next to the
9 Mercer Island incident, 38, 39, 40 of that
10 same exhibit, there was substantial testimony
11 that there was concern that Mr. Titus was
12 giving the appearance of being a law
13 enforcement officer. Do you recall that
14 testimony?

15 A I do.

16 Q Okay. Do you have any other
17 information relating to him giving the general
18 appearance of being a law enforcement officer?

19 A In this incident?

20 Q No, aside from this incident.

21 MR. LYON: Objection, beyond the
22 scope of cross.

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1 JUDGE SIPPEL: Sustained.

2 BY MR. KNOWLES-KELLETT:

3 Q With respect to the Mercer Island
4 incident and raising him to a level three,
5 were you required to put in writing, put your
6 assessment of that in writing?

7 A No.

8 Q And is that because the -- why was
9 that?

10 A Because his case was not one of
11 the ones that went through the End of Sentence
12 Review Board.

13 Q Why was that that it didn't go
14 through the End of Sentence Review Board?

15 A Because he was released pre End of
16 Sentence Review Board, before the End of
17 Sentence Review Board was created.

18 Q Okay. And with respect to the
19 paragraph in your testimony regarding the End
20 of Sentence Review Board and departures having
21 to be in writing, do you have an understanding
22 of why that paragraph is in there?

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1 A Well, it was to give a complete
2 record about how the End of Sentence Review
3 Board works and the fact that it was created
4 to, you know, make things consistent across
5 the state.

6 Q Okay. So would any written
7 assessment ever have been required of Mr.
8 Titus? Would any assessment of his risk be
9 required to be in writing?

10 A No.

11 Q Okay. And why is that?

12 A Because he was released prior to
13 the End of Sentence Review Board going into
14 being enacted.

15 MR. KNOWLES-KELLETT: Your Honor,
16 in light of all the evidence regarding the
17 written assessment in this matter, his most
18 recent one and his score on the MSOST and the
19 score on the RRASOR, what I'd like to do, I
20 don't need to ask any questions to clarify it
21 but I'd like to put that written assessment
22 into evidence. I apologize, my copy is

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1 upstairs.

2 MS. LANCASTER: George, can I
3 borrow yours and go make a copy of it?

4 MR. LYON: You can. I'll note
5 right now I'm going to object.

6 JUDGE SIPPEL: Let's get a ruling
7 on it. Why?

8 MR. LYON: Well, there's been
9 substantial testimony from this witness
10 himself as to the unreliability of this
11 report, I'm sorry, of the procedures and of
12 the use of the tool itself.

13 JUDGE SIPPEL: But you did present
14 it to him and asked him a series of questions
15 about it.

16 MR. LYON: I did.

17 JUDGE SIPPEL: I can remember he
18 had it in his hands. He was looking at it.

19 MR. LYON: I did. There's no
20 doubt about it. But I think in order, as a
21 foundation, to have this into evidence and to
22 have the Bureau rely upon the results in their

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1 findings, there has to be some basis to
2 conclude that this tool has some degree of
3 scientific reliability, and I don't think
4 that's been shown here.

5 JUDGE SIPPEL: Well, I would
6 receive it just for the purposes of, you know,
7 issues of credibility and completeness of the
8 record. If I'm going to have to write on this
9 thing, and he's testified to it and he's had
10 it in front of him, I feel a lot more
11 comfortable having the document in there. I'm
12 not necessarily going to reach any conclusions
13 or findings on the basis of it, but I'm not
14 promising I won't either. It's in the context
15 of the whole record.

16 MR. LYON: I made my objection.

17 JUDGE SIPPEL: Yes, you made your
18 objection. It's overruled.

19 MS. LANCASTER: Thank you.

20 BY MR. KNOWLES-KELLETT:

21 Q I'd like to turn your attention,
22 Detective Shilling, to Exhibit 17, Titus

1 Exhibit 17. I'm sorry.

2 JUDGE SIPPEL: While you're
3 looking at that, Detective, Mr. Knowles-
4 Kellett, let me ask you, is there any
5 particular reason why the government, why the
6 Bureau didn't report that last assessment in
7 as a government exhibit?

8 MR. KNOWLES-KELLETT: Without
9 Detective Shilling's explanation, which is
10 very long-winded, your Honor, it's very
11 difficult to read that assessment, so we
12 didn't think it was all that helpful. But
13 once you ask him the scores on all the various
14 things and go through what Mr. Lyon went
15 through, then you ought to have it because
16 you're not going to be able to understand the
17 testimony. It's not that we thought it was in
18 any way faulty or anything.

19 JUDGE SIPPEL: All right.

20 MR. KNOWLES-KELLETT: You know, we
21 had Detective Shilling, who's an expert in
22 using this actuarial tool. The tool has some

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1 question as to its reliability. I disagree
2 with his characterization that it's wholly
3 unreliable by the physical scoring of it. In
4 his written testimony, it tells you what all
5 the totals were and how that comes out on, you
6 know, determining a risk level. And we
7 thought that, you know, the individual scoring
8 wasn't all that helpful, at least not to me.
9 But it's going to help me read his testimony.

10 JUDGE SIPPEL: I understand.

11 MR. LYON: I'll note for the
12 record, your Honor, that I comprehend
13 counsel's words, but I thought that Exhibit 4
14 was purported to be Mr. Titus' entire file at
15 the Seattle Police. I find it difficult to
16 understand why the evaluation wasn't included
17 before.

18 JUDGE SIPPEL: Me, too. We had a
19 lot of documents in there that we had to
20 wrestle with this business of whether or not
21 it would come in because of hearsay,
22 completeness, etcetera, etcetera, etcetera.

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1 That one looked, I don't want to say slam
2 dunk, but that one looked like it was pretty
3 easy. I haven't seen it yet, but, I mean, it
4 looks --

5 MR. KNOWLES-KELLETT: I apologize.
6 The complete file that Detective Shilling gave
7 to me when I visited him in February is
8 Exhibit 4. That document postdates my
9 request, and I didn't even know that there was
10 documentation that was added to the file until
11 George's subpoena and after he submitted the
12 written testimony. So, in fact, when I
13 visited him in February, he double checked
14 that I had a complete copy of his file.

15 MR. LYON: The file, your Honor, I
16 would note that I did not undertake to examine
17 the witness as to his scoring of Mr. Titus on
18 this test, and I am concerned about some of
19 the scoring on the test, which is another
20 reason why I did not, I have some issue as to
21 it being placed into the record. I would like
22 to reserve the opportunity to determine if I

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1 want to further examine the witness as to the
2 scoring of this.

3 MS. LANCASTER: Your Honor, if we
4 might respond. I mean, when is he going to
5 make this decision because Detective Shilling,
6 we weren't planning to have him stay here past
7 the close of his testimony. I mean, he's here
8 from across the country, and he's not going to
9 be here indefinitely.

10 MR. LYON: Well, I understand
11 counsel's concern. However, it was not until
12 five minutes ago that I understood Bureau
13 counsel wanted to put this document into
14 evidence. I gave it to the witness for a very
15 limited point, which was to refresh his
16 recollection as to the date he did it.

17 JUDGE SIPPEL: Well, we did cover
18 some points. I can remember specifically, for
19 example, there was one category you describe
20 a certain, correct me if I'm wrong, Detective,
21 but you describe a certain number to a victim
22 as to whether it's a male or a female, and

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1 it's a higher number if it's a male than a
2 female.

3 MR. LYON: That was in my
4 examination of the RRASOR, your Honor.

5 MS. LANCASTER: Which is part of
6 the document.

7 MR. LYON: Well, that's true, but
8 it's also an independent assessment tool.

9 JUDGE SIPPEL: Well, it's a lot of
10 things, but I feel I'm going to have a
11 difficult time making sense of the record
12 without that document when you have all that
13 testimony around it. I mean, I understand
14 what you're saying. You don't want to concede
15 the validity of what's in there, and though
16 you really haven't had an opportunity to go
17 after this witness in the sense of going down
18 this piece-by-piece-by-piece.

19 MR. LYON: Right.

20 JUDGE SIPPEL: But I don't want to
21 do that either.

22 MR. LYON: Yes.

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1 JUDGE SIPPEL: But I don't see how
2 I can not put the document in.

3 MR. LYON: Okay. Time is moving
4 along, and I'd appreciate if we can keep going
5 with the examination.

6 JUDGE SIPPEL: Yes, sir. What are
7 you going to number this as?

8 MR. KNOWLES-KELLETT: EB Exhibit
9 14, your Honor.

10 (Whereupon, the above-referred to
11 document was marked as Government
12 Exhibit No. 14 for
13 identification.)

14 JUDGE SIPPEL: EB 14? Okay, looks
15 good.

16 MR. KNOWLES-KELLETT: And this is
17 --

18 JUDGE SIPPEL: EB Number 14. How
19 many pages?

20 MR. KNOWLES-KELLETT: Four.

21 JUDGE SIPPEL: Four pages?

22 MR. KNOWLES-KELLETT: Yes.

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1 JUDGE SIPPEL: All right. And
2 this is entitled "Washington State Sex
3 Offender Risk Level Classification," revised
4 1999, and it pertains to Mr. David Lee Titus.
5 It's been identified, and I understand there
6 is an objection to it, which I have overruled,
7 but it's been received in evidence at this
8 time as Enforcement Bureau Exhibit 14.

9 (Whereupon, Government Exhibit No.
10 14 was received into evidence.)

11 JUDGE SIPPEL: Next question.

12 BY MR. KNOWLES-KELLETT:

13 Q Oh, turning your attention to
14 Titus Exhibit 17.

15 JUDGE SIPPEL: Titus 17.

16 BY MR. KNOWLES-KELLETT:

17 Q I'd like to draw your attention on
18 the first page, this is the January 2006
19 bulletin from the Washington State Institute
20 for Public Policy. I'd like to draw your
21 attention down in the summary, key findings
22 regarding the classification tool.

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1 A Yes.

2 Q Is your understanding that the
3 second bullet reads, "The risk assessment has
4 little or not accuracy in predicting sex
5 offender recidivism. Some elements, however,
6 predict felony sex recidivism with moderate
7 accuracy?"

8 A Yes.

9 Q Did you understand that to be the
10 case?

11 A Yes.

12 Q Do you consider, despite all of
13 Mr. Lyon's testimony --

14 MR. LYON: Objection.

15 BY MR. KNOWLES-KELLETT:

16 Q Do you consider these tools to be
17 worthless in terms of predicting sex offender
18 recidivism?

19 JUDGE SIPPEL: You're going to
20 have to restate that question.

21 BY MR. KNOWLES-KELLETT:

22 Q In your opinion, is the WASOST

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1 worthless in terms of predicting sex offender
2 recidivism?

3 A No, it is not.

4 Q Is it --

5 JUDGE SIPPEL: He already
6 testified to that. Go ahead.

7 THE WITNESS: It is a tool, and
8 that's all it is. It is a tool in a toolbox.
9 There are a lot of tools, and this is just
10 one.

11 BY MR. KNOWLES-KELLETT:

12 Q Okay. With respect to Mr. Titus'
13 sex offender assessments, is it one of the
14 tools that you used to assess him?

15 MR. LYON: That has been
16 voluminous, your Honor. It's been voluminous.

17 JUDGE SIPPEL: Yes. Objection
18 sustained. We have to move on.

19 MR. KNOWLES-KELLETT: I'm right at
20 the end, your Honor.

21 BY MR. KNOWLES-KELLETT:

22 Q In light of the total tools that

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1 you used to assess Mr. Titus' risk, you
2 continue to believe that he's a level-three
3 sex offender?

4 A Yes. Again, based on the totality
5 of the circumstances, based on the pattern of
6 sex offenses, based on the pattern of
7 violence, based on what they said in the sex
8 offender treatment summary for relapse
9 prevention. These are things that you need to
10 look for, and one of them was aggressiveness,
11 being in places where children tend to
12 congregate. I mean, these are all things that
13 go into this. And when you take a look at all
14 of these different tools that we have in the
15 toolbox and based on years of experience in
16 dealing with sex offenders, all of these
17 things raise grave concerns to me, and I
18 believe that Mr. Titus is a high-risk to re-
19 offend.

20 Q Does that mean he will re-offend?

21 A Absolutely not. It does not mean
22 --

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1 Q Does it necessarily mean that he's
2 more likely than not to re-offend?

3 A It means that he is at a high risk
4 to re-offend.

5 Q Okay. So you don't put a
6 numerical value of prediction on that?

7 A No.

8 Q Okay. You have concerns regarding
9 him around children?

10 A Absolutely.

11 MR. KNOWLES-KELLETT: No further
12 questions, your Honor.

13 RECROSS EXAMINATION

14 BY MR. LYON:

15 Q Detective Shilling, a screwdriver
16 is a tool, correct?

17 A Yes.

18 Q Not very good for driving in a
19 nail, is it?

20 A It's not very good for that
21 purpose.

22 Q All right. There is no evidence

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1 in Mr. Titus' file that you maintain that
2 indicates that he would be a threat to a
3 relative; is that correct?

4 A If the relative was a child? He
5 hasn't offended against a child that was a
6 relative, but he has offended against
7 children. So I would be concerned with him
8 babysitting a relative who was a child.
9 Absolutely.

10 Q Okay. Now, his mother didn't
11 indicate that he's babysat his nieces or
12 nephews, did she?

13 A She --

14 JUDGE SIPPEL: Are there any
15 nieces and nephews?

16 MS. LANCASTER: Yes, sir.

17 MR. LYON: Yes.

18 THE WITNESS: I'd have to look at
19 her statement again.

20 MR. LYON: Okay. And you're
21 welcome to.

22 JUDGE SIPPEL: What's the number

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1 on that?

2 MR. LYON: I'll get it for you.

3 JUDGE SIPPEL: You're looking at
4 the testimony of Anna Harris.

5 MR. LYON: That's correct, your
6 Honor.

7 JUDGE SIPPEL: And she is Mr.
8 Titus' mother.

9 MR. LYON: That's correct, your
10 Honor.

11 BY MR. LYON:

12 Q There's nothing about babysitting
13 his nieces and nephews in Exhibit 10, is
14 there?

15 A I don't see anything where he's
16 babysitting his nieces and nephews.

17 Q What she does indicate is that
18 he's answered their questions and explained
19 things to them, correct?

20 A He listens to their little
21 problems and takes time to teach them about
22 whatever they may be interested in or learning

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